

JUN 13 1940

CHARLES ELMORE CHAPLEY  
CLERK

IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1940

**No. 94**

ELMER W. KELLEY AND THE GENERAL STREET  
SIGNAL CORPORATION,

*Petitioners,*

*vs.*

THE CITY OF SYRACUSE, CROUSE-HINDS COMPANY,  
AND SYRACUSE LIGHTING COMPANY.

ELMER W. KELLEY AND THE GENERAL STREET  
SIGNAL CORPORATION,

*Petitioners,*

*vs.*

THE CITY OF NEW YORK AND JOHN A. HARRISS.

**BRIEF FOR RESPONDENTS.**

HENRY R. ASHTON,  
*Counsel for Respondents  
in Syracuse Case.*

GEORGE H. MITCHELL,  
HARRY A. YERKES, JR.,  
*Counsel for Respondents  
in New York City Case.*

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**BRIEF FOR RESPONDENTS.**

The Syracuse case was decided by the court below January 19, 1931 and the New York City case March 6, 1933<sup>1</sup>. No petition for writ of certiorari was filed in the Syracuse case. Certiorari was denied in the New York City case in October, 1933<sup>2</sup>.

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<sup>1</sup> 47 F. (2d) 349; 63 F. (2d) 1007.

<sup>2</sup> 290 U. S. 637.

April, 1939, petitioners filed in the court below petitions for leave to file bills of review in both cases. Those petitions were heard May 15, 1939, and denied without opinion May 31, 1939. In June, 1939, a petition for rehearing of the said petitions was filed and was also denied without opinion on June 26, 1939. No petition for writ of certiorari was filed.

In February, 1940, petitioners again petitioned the court below, this time for a "reargument" of petitioners' former appeals<sup>3</sup>. That petition was based upon substantially the same allegations as the earlier petitions for leave to file bills of review. The petition for reargument was denied by the court below March 13, 1940.

The present petition for writ of certiorari asks this Court to review this latest order of the court below<sup>4</sup>.

Each of the above mentioned petitions in the court below has been opposed by respondents on the ground that no fact is alleged which could justify granting of the relief sought. The present petition is also opposed on the same ground.

The petition asserts that the 1931 and 1933 decisions of the court below should be set aside because at the time the decision in the Syracuse case was rendered there was pending the case on the same patent against the City of New York and the late Dr. John A. Harriss, which case had not yet been tried; that Louis S. Levy was Harriss' personal lawyer; that Manton was under obligation to Levy; and that the pendency of the New York City case was known to Manton when the Syracuse case was decided in 1931. Manton did not sit in the New York City case. No evidence of any irregularity in either case has been shown.

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<sup>3</sup> R. 2.

<sup>4</sup> R. 15.

The petition fails to state that Levy was not of counsel for Harriss in the New York City case. That case was defended by the City of New York both on its own and Harriss' behalf and was handled by special counsel retained for that purpose<sup>5</sup>.

As to the merits of these cases, the Court is respectfully referred to the respondents' brief in opposition to the petition for writ of certiorari in a third case by these same petitioners against the City of Atlantic City, *et al.*, October Term, 1939, No. 304, in which the petition was denied<sup>6</sup>. The Court's attention also is called to the fact that a petition for leave to file a bill of review containing substantially the same allegations as the present petition was filed in the Circuit Court of Appeals for the Third Circuit in the above mentioned Atlantic City case, and was denied by that court from the bench when the matter was orally presented June 15, 1939.

It is submitted that the petition for writ of certiorari should be denied.

Respectfully submitted,

HENRY R. ASHTON,  
Counsel for Respondents  
in Syracuse Case.

GEORGE H. MITCHELL,  
HARRY A. YERKES, JR.,  
Counsel for Respondents  
in New York City Case.

June, 1940.

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<sup>5</sup> 58 F. (2d) 831; 63 F. (2d) 1007.

<sup>6</sup> 302 U. S. 722.